

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

ANTHONY BROWN,

Defendant.

MEMORANDUM AND ORDER  
16-cr-0297 (AMD)

**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.

★ NOV 16 2017 ★

BROOKLYN OFFICE

ANN M. DONNELLY, District Judge:

The defendant, Anthony Brown, proceeding *pro se*,<sup>1</sup> filed a motion on October 30, 2017, requesting, among other things, to modify and/or vacate the sentence imposed by this Court on October 11, 2017. (ECF No. 240.) The defendant also filed a notice of appeal on October 20, 2017. (ECF No. 231.) No matter whether the Court construes Mr. Brown's submission as a motion to correct his sentence under Federal Rule of Criminal Procedure 35(a), or as a motion to vacate pursuant to 28 U.S.C. § 2255, the defendant's notice of appeal strips this Court of jurisdiction over any substantive matters related to this case, and therefore precludes me from ruling on the defendant's motion. *See U.S. v. Ramjohn*, No. 96-cr-767-SJ, 2008 WL 974580, at \*1 (E.D.N.Y. Apr. 8, 2008) (finding that a notice of appeal precluded the court from adjudicating the defendant's Rule 35(a) motion, and citing *U.S. v. Ransom*, 866 F.2d 574, 575 (2d Cir. 1989)); *U.S. v. Nichols*, 56 F.3d 403, 411 (2d Cir. 1995) ("an effective notice of appeal . . . divests the district court of its control over those aspects of the case involved in the appeal . . . a district court does not have the power to change a sentence . . . while an appeal [is] pending"); *U.S. v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) ("As a general matter, the filing of a notice of

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<sup>1</sup> Although the defendant was represented by counsel up to and during his sentencing, he is proceeding *pro se* for purposes of this motion.

appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”).

### **CONCLUSION**

Accordingly, because the defendant has filed a notice of appeal, I do not have jurisdiction to make a determination on the defendant’s motion.

SO ORDERED.

s/Ann M. Donnelly  
ANN M. DONNELLY  
United States District Judge

Dated: Brooklyn, New York  
November 17, 2017